UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)

☒ APPLICATION FOR ENFORCEMENT ☐ PETITION FOR REVIEW

1. SEE NOTICE ON REVERSE. 2. PLEASE TYPE OR PRINT. 3. PAPERCLIP ANY ADDITIONAL PAGES

CAPTION:	AGENCY NAME:	AGENCY NO.:
NATIONAL LABOR RELATIONS BOARD v. EAST MARKET RESTAURANT, INC.	National Labor Relations Board	02-CA-120982, 02-CA-133656 and 02-CA-144988
	DATE THE ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT WAS ENTERED BELOW: June 30, 2015	ALIEN NO : (Immigration Only)
	DATE THE PETITION OR APPLICATION WAS FILED:	Is this a cross-petition for review / cross-application for enforcement? ☐ YES ☒ NO

Contact Information for Petitioner(s) Attorney:	Counsel's Name: Linda Dreeben	Address: Nat'l Labor Relations Board 1015 Half Street, S.E. Washington, D.C. 20570	Telephone No.: (202) 273-2960 E-mail: AppellateCourt@nlrb.gov	Fax No.: (202) 273-0191
Contact Information for Respondent(s) Attorney:	Counsel's Name: Curt D. Schmidt, Esq.	Address: Law Office of Joe Zhenghong Zhou & Asscs., PLLC 136-20 38th Ave., Ste 10H Flushing, NY 11354	Telephone No.: (718) 539-7098 E-mail: curtschmidt88@gmail.com	Fax No.:

JURISDICTION OF THE COURT OF APPEALS (provide U.S.C. title and section):	APPROX. NUMBER OF PAGES IN THE RECORD:	APPROX. NUMBER OF EXHIBITS IN THE RECORD:	Has this matter been before this Circuit previously? ☐ Yes ☒ No If Yes, provide the following: Case Name: 2d Cir. Docket No.: Reporter Citation: (*i.e.*, F.3d or Fed. App.)
29 USC § 160(e)			

***ADDENDUM "A"*: COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; AND (3) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT.**

***ADDENDUM "B"*: COUNSEL MUST ATTACH TO THIS FORM: (1) THE RELIEF REQUESTED; (2) A LIST OF THE PROPOSED ISSUES; AND (3) THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.**

PART A: STANDING AND VENUE

STANDING	**VENUE**
PETITIONER / APPLICANT IS: ☒ AGENCY ☐ OTHER PARTY ☐ NON-PARTY (SPECIFY STANDING):	COUNSEL MUST PROVIDE IN THE SPACE BELOW THE FACTS OR CIRCUMSTANCES UPON WHICH VENUE IS BASED: Venue is proper because unfair labor practices occurred in New York.

IMPORTANT. COMPLETE AND SIGN ON PAGE 2 OF THIS FORM.

PART B: NATURE OF ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT
(Check as many as apply)

TYPE OF CASE:

_____ ADMINISTRATIVE REGULATION / RULEMAKING

_____ BENEFITS REVIEW

__X__ UNFAIR LABOR

_____ HEALTH & SAFETY

_____ COMMERCE

_____ COMMUNICATIONS

_____ ENERGY

_____ IMMIGRATION - **includes denial of an asylum claim**

_____ IMMIGRATION - **does not include denial of an asylum claim**

_____ TARIFFS

_____ OTHER:
(SPECIFY) _____

1. Is any matter relative to this petition or application still pending below? ☐ Yes, specify: _____ ☒ No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:
   (A) Arises from substantially the same case or controversy as this petition or application ? ☐ Yes ☒ No
   (B) Involves an issue that is substantially similar or related to an issue in this petition or application ? ☐ Yes ☒ No

If yes, state whether ☐ "A," or ☐ "B," or ☐ both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name:	Docket No.	Citation:	Court or Agency:

Name of Petitioner or Applicant:

Date: October 4, 2016	Signature of Counsel of Record: /s/ Linda Dreeben

NOTICE TO COUNSEL

Once you have filed your Petition for Review or Application for Enforcement, you have only ten (10) calendar days in which to complete the following important steps:

1. Complete this Agency Appeal Pre-Argument Statement (Form C-A), serve it upon all parties, and file an original and one copy with the Clerk of the Second Circuit.

2. Pay the $250 docketing fee to the Clerk of the Second Circuit, unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN TEN (10) CALENDAR DAYS, YOUR PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT WILL BE DISMISSED. *SEE* THE CIVIL APPEALS MANAGEMENT PLAN OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

ADDENDUM "A"

(1) A Brief Description of the Nature of the Action:

This is an application by the NLRB for summary judgment enforcing its order against Respondent, pursuant to Section 10(e) of the National Labor Relations Act (29 U.S.C. §§ 151 and 160 (e)). On June 30, 2015, a complaint, consolidated complaint, and an amendment to the consolidated complaint were issued charging Respondent with certain violations of the Act. In letters of March 19, 2015, and April 9, 2015, Respondent informed the Board that it would not file an answer to the complaint. On April 15, 2015, counsel the General Counsel filed with the Board a Motion for Default Judgment. On June 30, 2015, the Board granted the Motion for Default Judgment and entered an appropriate order against the Respondent.

(2) The result below:

In light of Respondent's failure to file an answer to the complaint, on June 30, 2015, the Board granted the Motion for Default Judgment and entered an appropriate order against the Respondent.

(3) Relevant Opinions and Orders:

- Board Decision and Order of June 30, 2015, *East Market Restaurant, Inc. and 318 Restaurant Workers Union*, reported at 362 NLRB No. 143

ADDENDUM "B"

(1) Relief requested:

Enforcement of the Board's June 30, 2015 Decision and Order.

(2) List of Proposed Issues:

The Board, due to Respondent's failure to respond to the Board, is entitled to summary entry of a judgment enforcing the Board's Order.

(3) Applicable standard of review:

Section 10(e) of the Act (29 U.S.C. § 160(e)) provides that "no objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused by extraordinary circumstances." This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). See also, *KBI Security Service, Inc. v. NLRB*, 91 F.3d 291, 295 (2d Cir. 1996); *NLRB v. Ferguson Electric Co.*, 242 F.3d 426, 435 (2d Cir. 2001).

East Market Restaurant, Inc. *and* 318 Restaurant Workers Union. Cases 02–CA–120982, 02–CA–133656, and 02–CA–144988

June 30, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

The General Counsel seeks a default judgment in this case on the ground that East Market Restaurant, Inc. (the Respondent) has withdrawn its answer to the complaint. Upon a charge and an amended charge filed by 318 Restaurant Workers Union (the Union) on January 17 and May 27, 2014, respectively, and charges filed on July 29, 2014, and January 23, 2015, the General Counsel issued a complaint, consolidated complaint, and amendment to the consolidated complaint on August 29, 2014, and March 20 and April 8, 2015, respectively, against the Respondent, alleging that it has violated Section 8(a)(5), (4), (3), and (1) of the Act. The Respondent filed an answer to the complaint. However, by letter dated March 19, 2015, the Respondent withdrew its answer and indicated its intention not to file an answer to the consolidated complaint, which was then pending. By letter dated April 9, 2015, the Respondent indicated its intention not to file an answer to the amendment to the consolidated complaint. Consistent with its representations, the Respondent failed to file an answer to the consolidated complaint or the amendment to the consolidated complaint.

On April 15, 2015, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 20, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was received by April 3, 2015, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the amendment to the consolidated complaint affirmatively stated that unless an answer was received within 14 days from the date of service thereof, all of the allegations in the amendment to the complaint would be deemed to be admitted. Although the Respondent filed an answer to the complaint on September 25, 2014, it subsequently withdrew its answer to the complaint. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted as true.[1] Accordingly, based on the withdrawal of the Respondent's answer and its failure to file an answer to the consolidated complaint or the amendment to the consolidated complaint, we deem the allegations in the consolidated complaint, as amended, to be admitted as true, and we grant the General Counsel's Motion for Default Judgment in part.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a domestic corporation with an office and place of business located at 75 East Broadway, New York, New York (the Respondent's facility), has been engaged in the business of operating a restaurant.

Annually, the Respondent, in the course and conduct of its operations as described above, derives gross revenue in excess of $500,000.

Annually, the Respondent, in the course and conduct of its operations as described above, purchases and receives at its facility goods and materials valued in excess of $5000 from suppliers located within the State of New York, each of which other enterprises had received these goods directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

Guo Ping Zheng	President & Shareholder
Shi Gan Zheng a/k/a Jimmy Cheng	Principal Shareholder
Zheng Xiang Zheng	Shareholder
Wan Lung Cheng a/k/a Alex Cheng	Manager
Ren Kan Wu a/k/a John Ng	Manager

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time dining room employees, including bus persons, waiters, captain, hosts and dim sum sellers employed by Respondent at its facility. And excluding guards, professionals, kitchen employees and supervisors as defined in the National Labor Relations Act, as amended.

Since about July 25, 2011, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a recognition agreement dated July 25, 2011.

At all material times since July 25, 2011, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The following events occurred beginning in November 2013.

1. About November 26, 2013, the Respondent, by Wan Lung Cheng a/k/a Alex Cheng at the Respondent's facility, threatened employees with criminal charges if they engaged in protected concerted and union activities.

2. About February 2014, the Respondent, by Zheng Xiang Zheng at the Respondent's facility:

(a) threatened employees with discharge if they engaged in protected concerted and union activities;

(b) threatened employees with unspecified reprisals if they engaged in protected concerted and union activities; and

(c) threatened to close the restaurant to discourage employees from engaging in protected concerted and union activities.

3. Beginning about December 2013 and continuing to date, the Respondent's employees and employees of Jing Fong Restaurant and Grand Harmony Restaurant (collectively, "the Restaurants") participated in union protests outside the Respondent's facility regarding the Respondent's treatment of its employee Sky Wong.

4. Beginning about April 2014, the Respondent organized regular pickets in front of the Restaurants in retaliation for the participation of the Restaurants' employees in the union and protected concerted activities referenced in paragraph 3.[2]

5. About June 7, 2013, the Respondent's employee Sky Wong engaged in concerted activities with other employees for the purpose of mutual aid and protection by filing with other employees a collective civil action in the United States District Court, Southern District of New York (Civil Action No. 1:13-CV-03902-HBP), alleging violations of the Fair Labor Standards Act and the New York Labor Law.

6. About November 26, 2013, the Respondent discharged Wong.

7. The Respondent engaged in the conduct described above in paragraph 6 because Wong assisted the Union and engaged in concerted activities described above in paragraph 5, and to discourage employees from engaging in these activities.

8. The Respondent engaged in the conduct described above in paragraph 6 because Wong cooperated in a Board investigation in Case 02–CA–105999.

9. About February 2014, the Respondent's employee Sai Qin Chen spoke with employees engaged in the conduct described above in paragraph 5 while at the Respondent's facility.

10. About May 5, 2014, Chen refused to participate in the conduct described above in paragraph 4.

11. About May 7, 2014, the Respondent discharged Chen.

12. The Respondent engaged in the conduct described above in paragraph 11 because Chen engaged in the activities described in paragraphs 9 and 10, assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

13. At the time of the discharges described above in paragraphs 6 and 11, the Union and the Respondent had not entered into an initial collective-bargaining agreement or an interim grievance procedure.

14. The subjects set forth above in paragraphs 6 and 11 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

15. The Respondent exercised discretion in engaging in the conduct set forth in paragraphs 6 and 11.

16. The Respondent engaged in the conduct described above in paragraphs 6 and 11 without prior notice to the Union and without affording the Union an opportunity to

[2] Although the complaint alleges that these facts constitute a violation of Sec. 8(a)(1), the complaint does not allege sufficient facts to determine whether this conduct violated the Act. Accordingly, the General Counsel's motion for default judgment with respect to this issue is denied.

bargain with the Respondent with respect to this conduct and the effects of this conduct.

17. About December 29, 2014, the Respondent closed its facility.

18. The effects of the conduct set forth above in paragraph 17 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

19. The Respondent engaged in the conduct described above in paragraph 17 without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct.

20. As a result of the Respondent's conduct described above in paragraph 17, on December 29, 2014, the Respondent terminated the employees in the unit.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 1, 2, 6, and 11, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By the conduct described above in paragraphs 6 and 11, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.[3]

3. By the conduct described above in paragraph 6, the Respondent has been discriminating against employees for giving testimony under the Act in violation of Section 8(a)(4) and (1) of the Act.

4. By the conduct described above in paragraphs 19 through 20, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

5. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of its decision to close its facility, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).[4]

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of its decision to cease operations of its facility on the unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased operations of its New York, New York facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay

[3] The complaint additionally alleged that the conduct in pars. 13–16 violated Sec. 8(a)(5) of the Act. We find it unnecessary to pass on whether the Respondent's conduct in this regard also violated Sec. 8(a)(5), because finding this additional violation would not materially affect the remedy.

[4] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).[5] Additionally, we shall order the Respondent to compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee. *Don Chavas d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Further, having found that the Respondent has violated Section 8(a)(3) and (1) of the Act by discharging Sky Wong and Sai Qin Chen, we shall order the Respondent to make Sky Wong and Sai Qin Chen whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, supra, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. We shall also order the Respondent to compensate Sky Wong and Sai Qin Chen for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee. *Don Chavas*, supra. In addition, the remedy for this violation would ordinarily also include an order requiring the Respondent to offer full reinstatement to Wong and Chen within 14 days from the date of our Order. However, in light of the fact that the Respondent has ceased operations, we shall not order the immediate reinstatement of Wong and Chen. Instead, to further effectuate the policies of the Act, we shall order the Respondent, in the event that it resumes the same or similar business operations, to offer Wong and Chen full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. The Respondent shall also be required to remove from its files any and all references to the unlawful discharges and to notify Sky Wong and Sai Qin Chen in writing that this has been done and that the unlawful conduct will not be used against them in any way.

Finally, in view of the fact that the Respondent has ceased operations at its New York, New York facility, we shall order the Respondent to mail a copy of the attached notice, in English as well as Mandarin, Cantonese, Foo Zhu, and any other dialects spoken by the employees, to the Union for posting, if willing, and to the last known addresses of the unit employees who were employed by the Respondent at any time since November 26, 2013, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, East Market Restaurant, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with criminal charges, unspecified reprisals, or discharge because they engage in concerted activities.

(b) Threatening to close the restaurant to discourage employees from engaging in protected concerted and union activities.

(c) Discharging employees because they join the Union and engage in concerted activities or to discourage employees from engaging in these activities.

(d) Failing and refusing to bargain collectively and in good faith with 318 Restaurant Workers Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit with respect to the effects of its decision to cease operations at its New York, New York facility:

> All full-time and regular part-time dining room employees, including bus persons, waiters, captain, hosts and dim sum sellers employed by Respondent at its facility. And excluding guards, professionals, kitchen employees and supervisors as defined in the National Labor Relations Act, as amended.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) In the event that the Respondent resumes operations, offer Sky Wong and Sai Qin Chen full reinstatement to their former positions or, if those positions no

[5] In the complaint and the motion for default judgment, the General Counsel seeks an order requiring reimbursement of all search-for-work and work-related expenses regardless of whether the discriminatees received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc*., 337 NLRB 175, 176 (2001), enfd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Sky Wong and Sai Qin Chen whole for any loss of earnings and other benefits they may have suffered as a result of its unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.

(c) Compensate Sky Wong and Sai Qin Chen for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters.

(d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges of Sky Wong and Sai Qin Chen and, within 3 days thereafter, notify them in writing that this has been done and that its unlawful conduct will not be used against them in any way.

(e) On request, bargain collectively and in good faith with the Union concerning the effects of the Respondent's decision to cease operations at its New York, New York facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(f) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(g) Compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix,"[6] in English as well as Mandarin, Cantonese, Foo Zhu, and any other dialects spoken by the employees, to the Union and to the last known addresses of all unit employees who were employed by the Respondent at any time since November 26, 2013. In addition to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(j) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 30, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with criminal charges, unspecified reprisals, or discharge because they engage in concerted activities.

WE WILL NOT threaten to close the restaurant to discourage employees from engaging in protected concerted and union activities.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT discharge employees because they join the Union and engage in concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with 318 Restaurant Workers Union as the exclusive collective-bargaining representative of our unit employees with respect to the effects of our decision to cease operations at our New York, New York facility. The bargaining unit is:

> All full-time and regular part-time dining room employees, including bus persons, waiters, captain, hosts and dim sum sellers employed by Respondent at its facility. And excluding guards, professionals, kitchen employees and supervisors as defined in the National Labor Relations Act, as amended.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, in the event that we resume operations, offer Sky Wong and Sai Qin Chen full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Sky Wong and Sai Qin Chen whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct, with interest.

WE WILL compensate Sky Wong and Sai Qin Chen for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharges of Sky Wong and Sai Qin Chen, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that our unlawful conduct will not be used against them in any way.

WE WILL, on request, bargain collectively and in good faith with the Union concerning the effects of our decision to cease operations at our New York, New York facility, and WE WILL reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay our unit employees their normal wages for the period set forth in the Board's decision, with interest.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

EAST MARKET RESTAURANT, INC.

The Board's decision can be found at www.nlrb.gov/case/02-CA-120982 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.